

REMARKS/ARGUMENTS

Claims 158-263 are pending. By this Amendment, claims 1-70, 72, 75-87, 89-94, 96-99, 101-117, 119, 120 and 122-124 are cancelled and new claims 158-263 are presented. Support for the new claims 158-263 can be found, for example, in original claims 1-70, 72, 75-87, 89-94, 97-99, 101-117, 119, 120 and 122-124. No new matter is added. In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

Personal Interview

Applicant appreciates the courtesies extended to Applicant's representatives by Examiner Price during the May 14, 2007 Personal Interview. Applicant's separate record of the substance of the interview is incorporated in the following remarks.

Allowable Subject Matter

Applicant thanks the Examiner for the indication in the Office Action that claims 28 and 94 contain allowable subject matter.

Rejection Under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claims 30, 66 and 96 as indefinite under 35 U.S.C. §112, second paragraph. By this Amendment, claims 30, 66 and 96 are cancelled, rendering the rejection moot as to those claims.

Rejection Under 35 U.S.C. §103

The Office Action rejects claims 1-27, 29-70, 72, 75-87, 89-93, 97-99, 101-117, 119, 120 and 122-124 under 35 U.S.C. §103(a) over SE 9903818 to Ebeling ("Ebeling") in view of

U.S. Patent No. 6,017,373 to Frisch et al. ("Frisch") and Donnely, W., "Firewood For Your Fireplace" ("Donnely"). By this Amendment, 1-70, 72, 75-87, 89-94, 96-99, 101-117, 119, 120 and 122-124 are cancelled, rendering the rejection moot.

New Claims

By this Amendment, new claims 158-263 are presented. Applicant submits that claims 158-263 are patentable over Ebeling, Frisch and Donnely for at least the reasons discussed below.

A. New Claim 158

New claim 158 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a wood selected from hardwoods; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the thickness dimension of the wick is from 0.019 to 0.028 inches; the wick comprises substantially straight grains aligned substantially in the height dimension; the wood has a moisture content of from 10 to 12 percent; and the wick provides an acoustic crackling sound when burned" (emphasis added). Ebeling, Frisch and Donnely do not disclose or suggest such an apparatus.

The Office Action asserts that Ebeling discloses a candle including a body of meltable fuel and a thin flat elongate wood or wood product wick disposed in the body and thus is relevant to the patentability of the present claims. *See, e.g.*, Office Action, page 3. Applicants concede that Ebeling appears to disclose an outdoor candle including a wick made

of wooden material impregnated with a combustable material. *See Ebeling**, pages 4 to 5. However, Ebeling provides no disclosure whatsoever with respect to particular features of the wick. Claim 158 requires very particular wick features. For example, the wick must be formed from hardwood, must have a thickness of from 0.019 to 0.028 inches, must include substantially straight grains aligned substantially in the height dimension, must have a moisture content of from 10 to 12 percent, must provide an acoustic crackling sound when burned. Ebeling does not suggest selecting for these parameters, much less selecting the particular recited values within those parameters.

The Office Action asserts that the parameters recited in the present claims are either generally known or taught by the secondary references, and that selecting the values recited in the claims from among those parameters constitutes a mere design choice. *See, e.g.*, Office Action, pages 7 to 8. However, Applicant submits that the present specification demonstrates that selecting, for example, the particular wood species, wick thicknesses, grain alignments, and moisture contents, as recited in the present claims provides an unexpected effect. Because the features of the present claims provide desirable properties, such as a crackling sound, even burn rate, low suit emissions, safe flame burn height, stability of the wick during the burn, and even consumption of fuel, while other combinations of features do not, it cannot be mere design choice to provide the claimed combination of features. *See, e.g.*, present specification, paragraph [0070]. It is well-settled that a proposed modification or combination must be supported by a "reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (U.S. 2007). Applicants submit

* Discussion of Ebeling is made with reference to the English-language translation prepared by the Patent Office.

that the only "reason" to assemble a combination of features as recited in claim 158 is found in the present specification.

Frisch and Donnelly do not remedy the deficiencies of Ebeling. Frisch discloses an artificial log including materials used to create a crackling sound. *See, e.g., Frisch*, column 2, lines 57 to 59. Donnelly discloses that wood logs often pop when burning. *See, e.g., Donnelly*, page 18. While these references may suggest the general desirability of crackling noises in firewood, the references do not remotely suggest that crackling noises are desirable in candle wicks. Moreover, these references provide absolutely no guidance regarding how to elicit such desirable noises from a candle wick, which has a dramatically different structure and burns by an entirely different mechanism. Only the present specification would have led one of ordinary skill in the art from the combined teachings of Ebeling, Frisch and Donnelly to the candle of claim 158. As discussed in the present specification, particular types of wood, cut in a very precise way, along with characteristics of those types of wood can be combined to achieve the desirable attributes of the present invention. *See present specification, paragraphs [0070], [0071]*. Neither every type of wood nor every configuration of such wood will produce the desired result. The cited references fail to disclose the particular combination of features of claim 158 or recognize the desirable, synergistic effect resulting therefrom.

For the foregoing reasons, claim 158 is patentable over patentable over Ebeling, Frisch and Donnelly.

B. New Claims 159-178

New independent claim 159 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a wood selected from the group consisting of poplar, cherry, maple, wenge, oak, rosewood and

bamboo; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and the wick provides an acoustic crackling sound when burned" (emphasis added). The cited references fail to disclose or suggest this particular combination of features. Accordingly, for the reasons discussed above with respect to claim 158, the cited references fail to anticipate or render obvious claim 159.

For the foregoing reasons, claim 159 is patentable over patentable over Ebeling, Frisch and Donnelly. Claims 160-178 depend from claim 159 and, thus, also are patentable over Ebeling, Frisch and Donnelly.

C. New Claims 179-198

New independent claim 179 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a wood having a moisture content of from 10 to 12 percent; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and the wick provides an acoustic crackling sound when burned" (emphasis added). The cited references fail to disclose or suggest this particular combination of features. Accordingly, for the reasons discussed above with respect to claim 158, the cited references fail to anticipate or render obvious claim 179.

For the foregoing reasons, claim 179 is patentable over patentable over Ebeling, Frisch and Donnelly. Claims 180-198 depend from claim 179 and, thus, also are patentable over Ebeling, Frisch and Donnelly.

D. New Claims 199-219

New claim 199 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a material selected from the group consisting of wood, wood product, a semi-wood composition, and a wood-like material; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the wick comprises substantially straight grains aligned substantially in the height dimension; and the wick provides an acoustic crackling sound when burned" (emphasis added). The cited references fail to disclose or suggest this particular combination of features. Accordingly, for the reasons discussed above with respect to claim 158, the cited references fail to anticipate or render obvious claim 199.

For the foregoing reasons, claim 199 is patentable over patentable over Ebeling, Frisch and Donnely. Claims 200-219 depend from claim 199 and, thus, also are patentable over Ebeling, Frisch and Donnely.

E. New Claims 220-240

New independent claim 220 recites "[a] candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a material selected from the group consisting of wood, wood product, a semi-wood composition, and a wood-like material; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the thickness dimension of the wick is from 0.019 to 0.028 inches; and the wick provides an acoustic crackling sound when burned" (emphasis added). The cited references fail to disclose or suggest this particular combination of features. Accordingly, for the reasons discussed above with respect to claim 158, the cited references fail to anticipate or render obvious claim 220.

For the foregoing reasons, claim 220 is patentable over patentable over Ebeling, Frisch and Donnely. Claims 221-240 depend from claim 220 and, thus, also are patentable over Ebeling, Frisch and Donnely.

F. New Claims 241-262

New claim 241 recites the features of prior claim 28. As the Office Action indicates that prior claim 28 contained allowable subject matter, claim 241 is allowable. Claims 242-262 depend from claim 241 and, thus are also allowable.

G. Claim 263

New claim 263 recites "[a] wick for a candle or candle apparatus, comprising: a rigid, planar structure formed from a material selected the group consisting of hardwoods; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the thickness dimension of the wick is from 0.019 to 0.028 inches; the wick comprises substantially straight grains aligned substantially in the height dimension; and the wick provides an acoustic crackling sound when burned" (emphasis added). The cited references fail to disclose or suggest this particular combination of features. Accordingly, for the reasons discussed above with respect to claim 158, the cited references fail to anticipate or render obvious claim 263.

For the foregoing reasons, claim 263 is patentable over patentable over Ebeling, Frisch and Donnely.

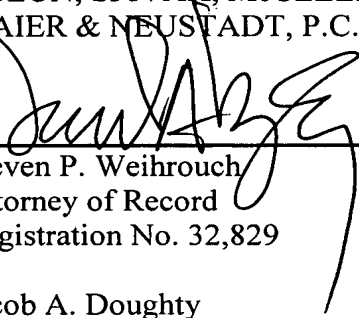
Conclusion

Application No. 10/759,508
Reply to Office Action of January 17, 2007

For the foregoing reasons, Applicant submits that claims 158-263 are in condition for allowance. Prompt reconsideration and allowance are respectfully requested.

Respectfully submitted,

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